

MASON,TERMED

United States District Court
Northern District of Illinois - CM/ECF LIVE, Ver 6,1 (Chicago)
CIVIL DOCKET FOR CASE #: 1:12-cv-09895

Phillips et al v. City of Chicago, a municipal corporation et al
Assigned to: Honorable John F. Grady
Cause: 28:1441 Petition for Removal- Civil Rights Act

Date Filed: 12/12/2012
Date Terminated: 01/17/2014
Jury Demand: Defendant
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff**Al Phillips**

represented by **Erron H. Fisher**
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Plaintiff**Barbara Phillips**

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V.

Defendant

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Defendant

Michael Steziek
Lt.

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ATTORNEY TO BE NOTICED

Defendant

Alejandro Silva
Sgt.

represented by **Marion Claire Moore**
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ATTORNEY TO BE NOTICED

Defendant

Gregory Pettigrew
*Officer, individually, and in his official
 capacity as a City of Chicago Police
 Officer*

represented by **Arlene Esther Martin**
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Marion Claire Moore
 (See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	clear	Docket Text
12/12/2012	1	☐	NOTICE of Removal from Circuit Court of Cook County, Illinois, case number (2012 L 13590) filed by City of Chicago, a municipal corporation (Attachments: # 1 Exhibit A [Summons & Complaint])(Franklin, Liza) (Entered: 12/12/2012)
12/12/2012	2	☐	CIVIL Cover Sheet (Franklin, Liza) (Entered: 12/12/2012)
12/12/2012	3	☐	ATTORNEY Appearance for Defendant City of Chicago, a municipal corporation by Liza Marie Franklin (Franklin, Liza) (Entered: 12/12/2012)
12/12/2012			CASE ASSIGNED to the Honorable John F. Grady. Designated as Magistrate Judge the Honorable Michael T. Mason. (nsf,) (Entered: 12/12/2012)
12/14/2012	4	☐	MAILED Notice of Removal letter to counsel of record. (vcf,) (Entered: 12/14/2012)
12/18/2012	5	☐	ATTORNEY Appearance for Plaintiffs Al Phillips, Barbara Phillips by Erron Fisher (Fisher, Erron) (Entered: 12/18/2012)
01/02/2013	6	☐	ATTORNEY Appearance for Defendant City Of Chicago by Marion Claire Moore (Moore, Marion) (Entered: 01/02/2013)
01/17/2013	7	☐	MOTION by Plaintiffs Al Phillips, Barbara Phillips to amend/correct <i>Complaint</i> (Attachments: # 1 Exhibit Amended Complaint)(Fisher, Erron) (Entered: 01/17/2013)

01/17/2013	8	☐	NOTICE of Motion by Erron H. Fisher for presentment of motion to amend/correct 7 before Honorable John F. Grady on 1/23/2013 at 11:00 AM. (Fisher, Erron) (Entered: 01/17/2013)
01/18/2013	9	☐	Fed.R.26(a)(1) Disclosures by Al Phillips, Barbara Phillips (Attachments: # 1 Exhibit Exhibits to 26(a)(1) disclosures)(Fisher, Erron) (Entered: 01/18/2013)
01/18/2013			SUMMONS Issued as to Defendant Brandon Pettigrew (nsf,) (Entered: 01/18/2013)
01/22/2013	10	☐	MINUTE entry before Honorable John F. Grady:The plaintiffs' motion for leave to amend the complaint and caption to change the name of party defendant Brandon Pettigrew to Officer Gregory Pettigrew 7 is granted without objection. No appearance is required on January 23, 2013. Mailed notice (cdh,) (Entered: 01/22/2013)
01/23/2013	11	☐	CERTIFICATE of Service by Plaintiffs Al Phillips, Barbara Phillips <i>Service to Officer Pettigrew</i> (Fisher, Erron) (Entered: 01/23/2013)
02/04/2013	12	☐	AMENDED complaint by Al Phillips, Barbara Phillips against Al Phillips, Barbara Phillips (Fisher, Erron) (Entered: 02/04/2013)
02/05/2013	13	☐	ATTORNEY Appearance for Defendant Gregory Pettigrew by Marion Claire Moore (Moore, Marion) (Entered: 02/05/2013)
02/05/2013	14	☐	ATTORNEY Appearance for Defendants City Of Chicago, Gregory Pettigrew by Arlene Esther Martin (Martin, Arlene) (Entered: 02/05/2013)
02/12/2013	15	☐	MINUTE entry before Honorable John F. Grady: An initial status hearing is set for March 27, 2013 at 11:00 a.m. Mailed notice (cdh,) (Entered: 02/12/2013)
02/19/2013	16	☐	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM <i>Counts I and III of Plaintiffs' Amended Complaint</i> (Moore, Marion) (Entered: 02/19/2013)
02/19/2013	17	☐	NOTICE of Motion by Marion Claire Moore for presentment of Motion to Dismiss for Failure to State a Claim 16 before Honorable John F. Grady on 2/27/2013 at 11:00 AM. (Moore, Marion) (Entered: 02/19/2013)
02/19/2013	18	☐	ANSWER to amended complaint by City Of Chicago, Gregory Pettigrew(Moore, Marion) (Entered: 02/19/2013)
02/22/2013	19	☐	ATTORNEY Appearance for Defendant City Of Chicago by Tiffany Yvette Harris (Harris, Tiffany) (Entered: 02/22/2013)
02/25/2013	20	☐	MINUTE entry before Honorable John F. Grady: Due to the forecast for inclement weather, the defendant's motion to dismiss for failure to state a claim 7 set for Wednesday, February 27, 2013 is canceled and reset to Thursday, February 28, 2013 at 11:00 a.m. Mailed notice (cdh,) (Entered: 02/25/2013)
02/28/2013	21	☐	MINUTE entry before Honorable John F. Grady: Motion hearing held. The plaintiffs may respond to the defendants' Rule 12(b)(6) motion to dismiss Counts I and III of plaintiffs' amended complaint 16 by March 21, 2013, and the defendants may reply by April 4, 2013. The motion will be taken under

			advisement. Mailed notice. (cdh,) (Entered: 03/04/2013)
03/11/2013	22	☐	RESPONSE by Al Phillips, Barbara Phillips in Opposition to MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM <i>Counts I and III of Plaintiffs' Amended Complaint</i> 16 (Attachments: # 1 Exhibit Exhibit A to Plaintiff's Response to Defendants' 12(b)(6) Motion)(Fisher, Erron) (Entered: 03/11/2013)
03/18/2013	23	☐	Notice of Deposition by Al Phillips, Barbara Phillips to Pettigrew/City (Attachments: # 1 Notice of Filing Notice of Deposition, Pettigrew)(Fisher, Erron) (Entered: 03/18/2013)
03/25/2013	24	☐	MINUTE entry before Honorable John F. Grady: The initial status hearing set for March 27, 2013 is canceled and no appearance is required. Mailed notice (cdh,) (Entered: 03/25/2013)
04/04/2013	25	☐	REPLY by City Of Chicago, Gregory Pettigrew to response in opposition to motion, 22 , MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM <i>Counts I and III of Plaintiffs' Amended Complaint</i> 16 (Harris, Tiffany) (Entered: 04/04/2013)
05/14/2013	26	☐	Pursuant to Local Rule 72.1, this case is hereby referred to the calendar of Honorable Michael T. Mason for the purpose of holding proceedings related to settlement conference. (cdh,) Mailed notice. (Entered: 05/14/2013)
05/14/2013	27	☐	MINUTE entry before Honorable John F. Grady: At the request of parties, this case is referred to Magistrate Judge Mason for settlement conference. Mailed notice (cdh,) (Entered: 05/14/2013)
05/17/2013	28	☐	MINUTE entry before Honorable Michael T. Mason: This case has been referred to Magistrate Judge Mason to conduct a settlement conference. An initial status hearing is set for 5/29/13 at 09:00 a.m. for the sole purpose of scheduling a settlement conference. However, counsel may confer with each other and contact the courtroom deputy, (312) 435-6051 by 5/23/13 to schedule the conference in lieu of attending the 5/29/13 status. (rbf,) (Entered: 05/17/2013)
05/29/2013	29	☐	MINUTE entry before Honorable Michael T. Mason: Status hearing held. Counsel for defendant failed to appear. Settlement conference set for 08/01/13 at 1:30 pm. If defendant is not available on that date, the parties shall jointly contact the courtroom deputy (312) 435-6051 by 05/30/13 for a new date. Parties shall strictly abide by this Court's Standing Order for Settlement Conference. Plaintiff's counsel shall deliver copies of both plaintiff's settlement demand letter as well as defendant's response letter to Chambers, Room 2270, by 07/26/13. (rbf,) (Entered: 05/29/2013)
07/09/2013	30	☐	ANSWER to Interrogatories by Barbara Phillips (Fisher, Erron) (Docket Text Modified by Clerk's Office.) (lp,). (Entered: 07/09/2013)
07/10/2013	31	☐	RESPONSE to Fed. R. Civ. Pro. 34 by Al Phillips, Barbara Phillips (Fisher, Erron) (Docket Text Modified by Clerk's Office.) (lp,). (Entered: 07/10/2013)
08/01/2013	32		MINUTE entry before Honorable Michael T. Mason: Settlement conference held on 8/1/13. The parties are unable to reach an agreement to settle the case at this

			time. All matters relating to the referral of this case having been concluded, the referral is closed and the case is returned to the assigned judge. Judge Michael T. Mason no longer referred to the case. (rbf,) (Entered: 08/01/2013)
08/01/2013	33		MINUTE entry before Honorable John F. Grady: A status hearing is set for August 7, 2013 at 10:30 a.m. Mailed notice (cdh,) (Entered: 08/01/2013)
08/07/2013	34		MINUTE entry before Honorable John F. Grady: Status hearing held. The plaintiffs may file a motion for leave to file a second amended complaint by August 14, 2013. Discovery shall close on February 28, 2013. A further status hearing is set for March 5, 2014 at 10:30 a.m. to set a date for trial. The court will set an interim status hearing after it has ruled on the defendants' pending motion to dismiss. Mailed notice (cdh,) (Entered: 08/08/2013)
08/12/2013	35	☐	<i>Second</i> AMENDED complaint by Al Phillips, Barbara Phillips against Michael Steziek, Alejandro Silva <i>City of Chicago And Officer Pettigrew</i> (Fisher, Erron) (Entered: 08/12/2013)
08/12/2013			SUMMONS Issued as to Defendants Alejandro Silva, Michael Steziek. (et,) (Entered: 08/12/2013)
08/27/2013	36	☐	MOTION by Plaintiffs Al Phillips, Barbara Phillips to amend/correct amended complaint 35 adding defendants (Fisher, Erron) (Entered: 08/27/2013)
08/27/2013	37	☐	MINUTE entry before Honorable John F. Grady: At the telephonic request of the Mr. Erron H. Fisher, the plaintiffs' motion for leave to amend the complaint adding party defendants Sgt. Alejandro Silva and Lt. Michael Steziek with service and summons to stand 36 is set for September 4, 2013 at 11:00 a.m. Mailed notice (cdh,) (Entered: 08/27/2013)
09/04/2013	40	☐	MINUTE entry before Honorable John F. Grady: Motion hearing held. The plaintiffs' motion for leave to amend the complaint to add party defendants Sgt. Alejandro Silva and Lt. Michael Steziek with service and summons to stand 36 is granted, over the defendants' objection. The defendants shall answer or otherwise plead to the Second Amended Complaint by September 26, 2013. Mailed notice (cdh,) (Entered: 09/06/2013)
09/05/2013	38	☐	MINUTE entry before Honorable John F. Grady: The defendants' motion to dismiss Counts I and III of the plaintiffs' complaint 16 is granted. Counts I and III of the plaintiffs' Second Amended Complaint are dismissed with prejudice. Enter Memorandum Opinion. Mailed notice (cdh,) (Entered: 09/05/2013)
09/05/2013	39	☐	MEMORANDUM OPINION Signed by the Honorable John F. Grady on September 5, 2013. Mailed notice(cdh,) (Entered: 09/05/2013)
09/26/2013	41	☐	ATTORNEY Appearance for Defendants Alejandro Silva, Michael Steziek by Marion Claire Moore (Moore, Marion) (Entered: 09/26/2013)
09/26/2013	42	☐	ANSWER to amended complaint <i>Affirmative Defenses, 12(b)(6) Defense, and Jury Demand</i> by Gregory Pettigrew, Alejandro Silva, Michael Steziek(Moore, Marion) (Entered: 09/26/2013)

09/27/2013	43	☐	ATTORNEY Appearance for Defendant City Of Chicago by Raoul Vertick Mowatt (Mowatt, Raoul) (Entered: 09/27/2013)
09/27/2013	44	☐	MOTION by Defendant City Of Chicago for extension of time to file answer (Mowatt, Raoul) (Entered: 09/27/2013)
09/27/2013	45	☐	NOTICE of Motion by Raoul Vertick Mowatt for presentment of motion for extension of time to file answer 44 before Honorable John F. Grady on 10/9/2013 at 11:00 AM. (Mowatt, Raoul) (Entered: 09/27/2013)
10/01/2013	46	☐	MINUTE entry before Honorable John F. Grady: The City of Chicago's motion for an extension of time to and including October 31, 2013 to answer or otherwise plead to the plaintiffs' second amended complaint 44 is granted. No appearance is required on October 9, 2013. Mailed notice (cdh,) (Entered: 10/01/2013)
10/09/2013	47	☐	Answers to Interrogatories by Al Phillips (Fisher, Erron) (Entered: 10/09/2013)
10/31/2013	48	☐	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM (Mowatt, Raoul) (Entered: 10/31/2013)
10/31/2013	49	☐	NOTICE of Motion by Raoul Vertick Mowatt for presentment of Motion to Dismiss for Failure to State a Claim 48 before Honorable John F. Grady on 11/13/2013 at 11:00 AM. (Mowatt, Raoul) (Entered: 10/31/2013)
11/13/2013	50	☐	MINUTE entry before Honorable John F. Grady: Motion hearing held. Plaintiffs' counsel was unable to appear. The plaintiffs may respond to the City of Chicago's motion to dismiss plaintiffs' Monell claims 48 by December 11, 2013, and the City may reply by January 3, 2014. The motion is taken under advisement. Plaintiffs' oral motion (communicated through defense counsel) to voluntarily dismiss the Monell claims against the individual defendants is granted. Mailed notice (cdh,) (Entered: 11/18/2013)
01/15/2014	51	☐	STIPULATION of Dismissal (Attachments: # 1 Notice of Filing)(Moore, Marion) (Entered: 01/15/2014)
01/17/2014	52	☐	MINUTE entry before the Honorable John F. Grady: On January 15, 2014, the parties filed a stipulation to dismiss with prejudice, and with each party bearing its own costs and attorneys' fees. Accordingly, this action is dismissed with prejudice. Civil case terminated. Mailed notice (cdh,) (Entered: 01/17/2014)

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

AL PHILLIPS and BARBARA PHILLIPS	)	
	)	
Plaintiffs	)	
	)	Case No.: 2012 CV 09895
vs.	)	
	)	
CITY OF CHICAGO, OFFICER GREGORY	)	
PETTIGREW, individually, and in his official	)	
capacity as a CITY OF CHICAGO Police Officer,	)	
	)	
Defendants.	)	

AMENDED COMPLAINT AT LAW

NOW COMES the Plaintiffs, AL PHILLIPS and BARBARA PHILLIPS, by their attorneys, FISHER & LAMONICA, P.C., and complaining against the Defendants, CITY OF CHICAGO, an Illinois municipal corporation and GREGORY PETTIGREW, individually, and in his official capacity as a city of Chicago Police Officer, states as follows:

Allegations Common to All Counts
The Parties

1. At all times relevant herein, the Plaintiffs, AL PHILLIPS and BARBARA PHILLIPS are residents of the City of Chicago, County of Cook, State of Illinois.
2. Defendant, Officer GREGORY Pettigrew, (star # 9333), was, at the time of this occurrence a Chicago Police Officer. He engaged in the conduct complained of while in the scope of his employment and under color of law. He is sued in his individual capacities as well.
3. The Defendant, CITY OF CHICAGO (hereinafter, "City"), is a municipal corporation

incorporated under the laws of the State of Illinois that operates the Chicago Police Department, and, at all times relevant to the events complained of herein, was the employer of the Defendant Officer Star # 9333. The City is being sued pursuant to the doctrine of respondeat superior on the pendant State law claims.

Background

4. On December 1, 2012, at approximately 3:00pm, the Plaintiff, AL PHILLIPS, was at his residence in or around the 800 block of West Buena Avenue, in the City of Chicago, State of Illinois, County of Cook.

5. At said time and place, Mr. Phillips motor-vehicle, was parked in front of his residence, in the same location that he routinely parked for 40 years, without incident.

6. At said time and place, the Plaintiff's neighbor informed the Plaintiff that his vehicle was receiving a parking ticket.

7. On December 1, 2012, at approximately 3:00pm, the Plaintiff, AL PHILLIPS exited the rear of his property through a driveway gate, and in a non-threatening manner approached his vehicle to ask the officer why he was writing a citation as well as to move his vehicle.

8. On December 1, 2012, at approximately 3:00pm, the Plaintiff, AL PHILLIPS spoke with Defendant, City of Chicago Officer GREGORY Pettigrew (star # 9333), who was writing the ticket.

9. On December 1, 2012, and at all times relevant herein, AL PHILLIPS' family, including co-Plaintiff BARBARA PHILLIPS, owned a puppy, Colonel Phillips, who was with him in the rear of his property.

10. At all times relevant herein, the Plaintiffs' puppy, Colonel Phillips, (hereinafter, "Colonel"), was a 7-month-old miniature bull terrier, weighing less than 30 lbs.

11. On December 1, 2012, and at all times relevant herein, when Mr. Phillips exited the rear of his home, his puppy, Colonel, followed him through the open gate, with his tail wagging.

12. On December 1, 2012, and at all times relevant herein, Colonel, was not acting in a threatening or vicious manner to any person including the Defendant, City of Chicago Officer GREGORY Pettigrew, or any other person, and in fact, was acting with pleasant nature with his tail wagging.

13. Colonel had been part of the Phillips family since he was 8 weeks old, and was of a championship show line, with the Phillips family hoping to show him in the future.

14. On December 1, 2012, and at all times relevant herein, Defendant, City of Chicago Officer GREGORY Pettigrew (Star # 9333), unholstered his gun and shot at Colonel, twice.

15. After being hit by either ricochet or shrapnel, from the firearm of City of Chicago Officer GREGORY Pettigrew, Colonel ran a few blocks where he was found cowering and shaking in bushes and was helped out by neighbors and taken for emergency veterinary care.

16. After shooting Colonel, the Defendant, City of Chicago Police Officer Star GREGORY Pettigrew, re holstered his gun and continued writing the parking ticket to the Plaintiff, AL PHILLIPS.

The Second Visit From Chicago Police to the Phillips Household

17. On the evening of December 3, 2012, two unknown City of Chicago police officials drove by, the home of AL PHILLIPS, and observed a news crew, including FOX 32's Larry Yellen, speaking with him.

18. On the evening of December 3, 2012, approximately 90 minutes later, the two unknown City of Chicago police officials, one believed to be a lieutenant and one a sergeant in rank, returned and questioned the Plaintiff, BARBARA PHILLIPS, as to why the media was involved in the shooting of the dog.

19. On the evening of December 3, 2012, the two aforementioned City of Chicago Police Officials, insinuated that BARBARA PHILLIPS and her family should let this matter go and not push it any further against the City of Chicago Police Department or the individual officer.

20. On the evening of December 3, 2012, after the Plaintiff AL PHILLIPS indicated that he would not let this matter go quietly, the aforementioned unknown City of Chicago police officials handed him a citation for allegedly having his dog off leash, 2 days prior.

Agency and Authority

21. On December 1, 2012, and December 3, 2012, the City of Chicago, employed as its agents, servants, and employees, various levels of City of Chicago Police Officers including the Defendant, Officer GREGORY PETTIGREW, (star # 9333) who shot Colonel, and the two unknown Chicago Police officials that visited the PHILLIPS household on the evening of December 3, 2012.

22. At all times relevant herein, Officer GREGORY PETTIGREW (star #9333), was acting individually, and as an agent, servant and employee of the City of Chicago.

23. At all times relevant herein, Officer GREGORY PETTIGREW, was acting under color of law.

24. At all times relevant herein, the two unknown City of Chicago Police Officials that visited the PHILLIPS household on the evening of December 3, 2012, were acting as agents, servants,

and employees of the City of Chicago.

25. At all times relevant herein, the two unknown City of Chicago Police Officials that visited the PHILLIPS household on the evening of December 3, 2012, were acting under color of law.

Jurisdiction

26. Pursuant to S.H.A. Const. Art. 6, Sec. 9, the Circuit Courts are Courts of general jurisdiction and have inherent authority and are presumptively competent to adjudicate claims arising under the laws of the United States.

27. Illinois Circuit Courts have jurisdiction to adjudicate claims brought under 42 U.S.C.A. 1983.

Count I-42 U.S.C. 1983
FOURTH AMENDMENT-EXCESSIVE FORCE
MOTION TO DISMISS COUNT I FILED ON 02.28.13
<https://ecf.ilnd.uscourts.gov/doc1/067112272357>

NOW COMES the Plaintiffs, AL PHILLIPS and BARBARA PHILLIPS, by their attorneys, FISHER & LAMONICA, P.C., and complaining against the Defendants, City of Chicago Police Officer GREGORY PETTIGREW (Star #9333), individually, and as agent, servant, and employee of the Defendant, The CITY OF CHICAGO, jointly, state as follows:

28. The Plaintiffs' reallege and incorporate paragraph 1 through 27 of this Complaint at Law as if fully set out in this Count I.

29. As described above, the conduct of City of Chicago Police Officer GREGORY PETTIGREW, acting under color of law, constituted excessive force in violation of the United States Constitution.

30. More specifically, the act of shooting the Plaintiffs' puppy, Colonel, which was

conducting itself in a peaceable fashion and was not a threat to any reasonable person, including Chicago Police Officer GREGORY PETTIGREW, was excessive and disproportionate to the alleged offense that the officer was in the process of citing, ie., a parking ticket.

31. The misconduct described in this Count was objectively unreasonable and was undertaken intentionally with willful indifference to the constitutional rights of the Plaintiffs, AL PHILLIPS and BARBARA PHILLIPS.

32. The aforementioned misconduct was undertaken with malice, willfulness and reckless indifference to the rights of the Plaintiffs.

33. As a result of the Defendant's unjustified and excessive use of force, including discharging his firearm twice to shoot a small puppy, the Plaintiffs suffered injuries, including emotional anguish, pain, suffering, substantial veterinary bills, and damage to their dog.

WHEREFORE, the Plaintiffs, AL PHILLIPS and BARBARA PHILLIPS, pray this honorable Court grant judgment in their favor and against the Defendant, City of Chicago Police Officer GREGORY PETTIGREW (Star # 9333), individually, and vicariously as agent, servant and employee of the City of Chicago, jointly and severally, and because the Defendant Officer acted maliciously, wantonly, and/or oppressively, Plaintiffs seek punitive damages against him in his individual capacity in an amount in excess of fifty-thousand dollars, grant attorney's fees, the costs of this action, and all other damages this Court deems just.

**Count II-42 U.S.C. 1983
FOURTH AMENDMENT-ILLEGAL SEIZURE**

NOW COMES the Plaintiffs, AL PHILLIPS and BARBARA PHILLIPS, by their attorneys, FISHER & LAMONICA, P.C., and complaining against the Defendants, City of Chicago Police

Officer GREGORY PETTIGREW (Star # 9333), individually, and as agent, servant, and employee of the Defendant, The CITY OF CHICAGO, jointly, state as follows:

28. The Plaintiffs' reallege and incorporate paragraph 1 through 27 of this Complaint at Law as if fully set out in this Count II.

29. The act of shooting the Plaintiffs' puppy, Colonel, as detailed above, violated the Plaintiffs' Fourth Amendment right to be free of unreasonable seizures.

30. The misconduct described in this Court, ie., shooting a puppy to effectuate the writing of a parking ticket, was objectively unreasonable and was undertaken intentionally with willful indifference to the Plaintiffs constitutional rights.

31. As a result of the Defendant Officer's illegal seizure, the Plaintiffs suffered injury, including emotional anguish, pain, suffering, substantial veterinary bills, and damage to their property, ie., dog.

WHEREFORE, the Plaintiffs, AL PHILLIPS and BARBARA PHILLIPS, pray this honorable Court grant judgment in their favor and against the Defendant, City of Chicago Police Officer GREGORY PETTIGREW (Star # 9333), individually, and vicariously as agent, servant and employee of the City of Chicago, jointly and severally, and because the Defendant Officer acted maliciously, wantonly, and/or oppressively, Plaintiffs seek punitive damages against him in his individual capacity in an amount in excess of fifty-thousand dollars, grant attorney's fees, the costs of this action, and all other damages this Court deems just.

**Count III-Due Process Violation
U.S. CONST. AMEND XIV, SEC 1**

**MOTION TO DISMISS COUNT III FILED ON 02.28.13
<https://ecf.ilnd.uscourts.gov/doc1/067112272357>**

NOW COMES the Plaintiffs, AL PHILLIPS and BARBARA PHILLIPS, by their attorneys, FISHER & LAMONICA, P.C., and complaining against the Defendants, City of Chicago Police Officer GREGORY PETTIGREW (Star # 9333), individually, and as agent, servant, and employee of the Defendant, The CITY OF CHICAGO, jointly, state as follows:

28. The Plaintiffs' reallege and incorporate paragraph 1 through 27 of this Complaint at Law as if fully set out in this Count III.

29. On December 1, 2012, and at all times relevant herein, the Plaintiffs, AL PHILLIPS and BARBARA PHILLIPS were the owners of a puppy, Colonel.

30. At all times relevant herein, the PHILLIPS family had a right, and cognizable property interest in the continued ownership and enjoyment of their family member, and pet, Colonel.

31. On December 1, 2012, without reason, lawful justification, or a reasonable fear of harm to himself or any other person, City of Chicago Police Officer GREGORY Pettigrew (Star # 9333), acting under color of law shot the Plaintiffs' puppy twice.

32. The act of shooting the Plaintiffs puppy, Colonel, and the related injury and damages to the dog represent a deprivation of the PHILLIPS property interest in their puppy.

33. The Defendant City of Chicago Police Officer GREGORY PETTIGREW (Star # 9333), acting as agent, servant and employee of the Defendant, City of Chicago, did not undertake any actions or provide due process prior to making the improper and unjustified determination that Colonel Phillips, a 7 month old puppy, posed a danger, thereby shooting him twice.

WHEREFORE, the Plaintiffs, AL PHILLIPS and BARBARA PHILLIPS, pray this honorable Court grant judgment in their favor and against the Defendant, City of Chicago Police Officer

GREGORY PETTIGREW (star # 9333), individually, and vicariously as agent, servant and employee of the City of Chicago, jointly and severally, and because the Defendant Officer acted maliciously, wantonly, and/or oppressively, Plaintiffs seek punitive damages against him in his individual capacity in an amount in excess of fifty-thousand dollars, grant attorney's fees, the costs of this action, and all other damages this Court deems just.

**Count IV-Intentional Infliction of Emotional Distress
STATE OF ILLINOIS- BARBARA PHILLIPS**

NOW COMES the Plaintiffs, BARBARA PHILLIPS, by her attorneys, FISHER & LAMONICA, P.C., and complaining against the Defendants, City of Chicago Police Officer GREGORY PETTIGREW (star # 9333), individually, and as agent, servant, and employee of the Defendant, The CITY OF CHICAGO, jointly and severally, state as follows:

28. The Plaintiffs' reallege and incorporate paragraph 1 through 27 of this Complaint at Law as if fully set out in this Count IV.

29. On December 1, 2012, the Plaintiff, BARBARA PHILLIPS, pulled up to her house shortly after the defendant had shot her puppy.

30. On December 1, 2012, the Plaintiff BARBARA PHILLIPS, saw the Defendant, City of Chicago Police Officer GREGORY PETTIGREW (Star 9333), in uniform, at the scene of the where her puppy was shot and learned of what had happened.

31. Chicago Police Officer Star 9333, act of shooting the Plaintiff's non-threatening puppy, then casually and callously returning to his task of writing a parking ticket, is extreme and outrageous conduct towards the Plaintiff.

32. Given the nature of the misconduct, the Defendant Officer GREGORY PETTIGREW committed the misconduct with knowledge or disregarding the probability that his actions were likely to cause severe emotional distress to the Plaintiff.

33. As a direct and proximate result of the acts of Chicago Police Officer GREGORY PETTIGREW (Star 9333), the Plaintiff, BARBARA PHILLIPS suffered severe emotional distress, emotional anguish, fear and anxiety.

WHEREFORE, the Plaintiff, BARBARA PHILLIPS, prays this honorable Court grant judgment in her favor and against the Defendant, City of Chicago Police Officer GREGORY PETTIGREW (Star 9333), individually, and vicariously as agent, servant and employee of the City of Chicago, jointly and severally, for the emotional distress, anguish and fear arising out of the unjustified shooting of her puppy, grant attorney's fees, the costs of this action, and all other damages this Court deems just.

**Count V-Intentional Infliction of Emotional Distress
STATE OF ILLINOIS- AL PHILLIPS**

NOW COMES the Plaintiffs, AL PHILLIPS, by his attorneys, FISHER & LAMONICA, P.C., and complaining against the Defendants, City of Chicago Police Officer GREGORY PETTIGREW (star 9333), individually, and as agent, servant, and employee of the Defendant, The CITY OF CHICAGO, jointly and severally, state as follows:

28. The Plaintiffs' reallege and incorporate paragraph 1 through 27 of this Complaint at Law as if fully set out in this Count V.

29. On December 1, 2012, the Plaintiff, AL PHILLIPS, was speaking with Defendant City of Chicago Police Officer GREGORY Pettigrew, when suddenly and without cause the officer pulled

his gun and shot the Plaintiff's puppy.

30. On December 1, 2012, the Plaintiff AL PHILLIPS witnessed the aforementioned senseless act of violence, directed at his puppy, which is considered to be a member of the PHILLIPS family.

31. Chicago Police Officer GREGORY Pettigrew's, act of shooting the Plaintiff's non-threatening puppy, then casually and callously returning to his task of writing a parking ticket, is extreme and outrageous conduct towards the Plaintiff.

32. Given the nature of the misconduct, the Defendant Officer committed the misconduct with knowledge or disregarding the probability that his actions were likely to cause severe emotional distress to the Plaintiff.

33. As a direct and proximate result of the acts of Chicago Police Officer GREGORY Pettigrew (star # 9333), the Plaintiff, AL PHILLIPS suffered and will continue to suffer severe emotional distress, emotional anguish, fear and anxiety.

WHEREFORE, the Plaintiff, AL PHILLIPS prays this honorable Court grant judgment in his favor and against the Defendant, City of Chicago Police Officer GREGORY PETTIGREW (Star # 9333), individually, and vicariously as agent, servant and employee of the City of Chicago, jointly and severally, for the emotional distress, anguish and fear arising out of the unjustified shooting of his puppy, grant attorney's fees, the costs of this action, and all other damages this Court deems just.

Count VI-First Amendment Retaliation
Illinois Constitution, Art. 1, Section 4
U.S.C.A. Const. Amend. 1

NOW COMES the Plaintiffs, AL PHILLIPS and BARBARA PHILLIPS, by their attorneys, FISHER & LAMONICA, P.C., and complaining against the Defendants, City of Chicago Police Officer Star # 9333, individually, and as agent, servant, and employee of the Defendant, The CITY OF CHICAGO, jointly, state as follows:

28. The Plaintiffs' reallege and incorporate paragraph 1 through 27 of this Complaint at Law as if fully set out in this Count V.

29. On the evening of December 3, 2012, two unknown Chicago Police Officials, one believed to be a lieutenant and one a sergeant, returned to the residence of the Plaintiffs, AL PHILLIPS and BARBARA PHILLIPS.

30. When the aforementioned City of Chicago Police Officers returned to the Phillips residence, they attempted to question the Plaintiff BARBARA PHILLIPS about the media had been contacted about the police shooting of their puppy.

31. On the evening of December 3, 2012, the aforementioned City of Chicago Police Officers returned to the Phillips residence in full Chicago Police uniform.

32. The aforementioned unknown Chicago Police Officials, who were depicted on Fox News leaving the Phillips residence, suggested to the Plaintiff BARBARA PHILLIPS that the Phillips family leave the issue alone and take no further action against the officer that shot their puppy.

33. After being informed that the PHILLIPS family wished further investigation, the aforementioned unknown Chicago Police Officers presented the Plaintiff AL PHILLIPS with a

citation”Administrative Notice of Ordinance Violation” for his dog being off leash, over two days prior.

34. It is not the custom and practice of the Chicago Police Department for high ranking police officials to show up at resident’s home addresses and issue “off leash” citations to dog owners 48 hours after the purported offense occurred.

35. The Defendant, City of Chicago, acting through its various agents, servants, and employees at the Chicago Police Department, issued the aforementioned citation 48 hours after the alleged offense, in direct retaliation for the Plaintiff, AL PHILLIPS, exercising his rights as guaranteed by the First Amendment of the United States Constitution and the Illinois Constitution, Art. 1, Section 4.

36. The aforementioned citation and use of police power and authority by unknown agents, servants and employees of the City of Chicago, whose images are captured on the Fox Chicago News Story, is in direct retaliation for the Plaintiff, AL PHILLIPS, exercise of free speech.

WHEREFORE, the Plaintiffs, AL PHILLIPS and BARBARA PHILLIPS, pray this honorable Court grant judgment in their favor and against the Defendant, City of Chicago Police Officer GREGORY PETTIGREW (star 9333), individually, and vicariously as agent, servant and employee of the City of Chicago, jointly and severally, and because the Defendant Officer acted maliciously, wantonly, and/or oppressively, Plaintiffs seek punitive damages against him in his individual capacity in an amount in excess of fifty-thousand dollars, grant attorney’s fees, the costs of this action, and all other damages this Court deems just.

**Count VII-State Law Claim
Indemnification-745 ILCS 10/9-102**

NOW COMES the Plaintiffs, AL PHILLIPS and BARBARA PHILLIPS, by their attorneys, FISHER & LAMONICA, P.C., and complaining against the Defendants, City of Chicago Police Officer GREGORY PETTIGREW (Star #9333), individually, and as agent, servant, and employee of the Defendant, The CITY OF CHICAGO, jointly, state as follows:

28. Plaintiff incorporates each of the aforementioned Counts I through V as if fully restated herein.

29. At the time of the events described above, the Defendant Officer Star # 9333 was employed by the City of Chicago.

30. The Defendant, Officer GREGORY PETTIGREW, committed the acts alleged above under color of law and within the scope of his employment as an employee of the City of Chicago.

31. On December 1, 2012, and at all times relevant herein, there existed a statute in the State of Illinois known as 745 ILCS 10/9-102

32. By virtue of this statute, should the Defendant, City of Chicago Police Officer GREGORY Pettigrew, (Star # 9333) be found liable for any of the aforementioned acts, the Defendant CITY OF CHICAGO, is responsible for the associated compensatory damages and attorneys fees, where applicable by statute.

WHEREFORE, the Plaintiffs, AL PHILLIPS and BARBARA PHILLIPS, pray this honorable Court grant judgment in their favor and against the Defendant, City of Chicago Police Officer GREGORY PETTIGREW (Star # 9333), individually, and vicariously as agent, servant and employee of the City of Chicago, and order all damages, including attorney's fees, to be indemnified as provided by statute.

Respectfully submitted,

FISHER & LAMONICA, P.C.

/s/ Erron H. Fisher

Erron H. Fisher

Illinois Bar No. 6284804

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**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

THOMAS RUSSELL III, DARCELL
RUSSELL and THOMAS RUSSELL II,
on their own behalf and on behalf of
their son DARREN RUSSELL, a minor,

Plaintiffs,

v.

CITY OF CHICAGO, OFFICER KATALINIC
(Star # 7187), OFFICER KASPER (Star # 3019)
OFFICER MOHAMMAD (Star #19999),
OFFICER ANTONSEN (Star # 19692), and
SERGEANT MARTIN MURPHY,

Defendants.

No. 10 CV 0525

Judge George M. Marovich

Magistrate Judge Sidney I. Schenkier

JURY TRIAL DEMANDED

AMENDED COMPLAINT

NOW COME Plaintiffs, THOMAS RUSSELL III, THOMAS RUSSELL II and
DARCEL RUSSELL, on their own behalf and on behalf of their minor son, DARREN
RUSSELL, by and through their attorneys Smith, Johnson, & Antholt, LLC, and complaining of
Defendants, CITY OF CHICAGO, OFFICER KATALINIC, OFFICER KASPER, OFFICER
MOHAMMAD, OFFICER ANTONSEN, and SERGEANT MURPHY, stating as follows:

Introduction

1. This action is brought pursuant to 42 U.S.C. Section 1983 to redress the
deprivation under color of law of Plaintiffs' Fourth Amendment rights as secured by the United
States Constitution.

Jurisdiction and Venue

2. This Court has jurisdiction of the action pursuant to 28 U.S.C. § 1331 and 28
U.S.C. § 1367, and venue is proper under 28 U.S.C. § 1391(b). On information and belief, all

parties reside in this judicial district, and the events giving rise to the claims asserted herein occurred within the district.

The Parties

3. Plaintiffs, Thomas and Darcel Russell, and their sons Darren and Thomas Russell are residents of Chicago, Cook County, Illinois.

4. Defendant Officers Katalinic, Antonsen, Mohammad, and Kasper, and Sergeant Murphy ("Defendant Officers") were at the time of this occurrence Chicago Police Officers. They engaged in the conduct complained of while in the scope of their employment and under color of law. They are sued in their individual capacities.

5. Defendant City of Chicago ("City") is a municipal corporation incorporated under the laws of the State of Illinois that operates the Chicago Police Department, and, at all times relevant to the events complained of herein, was the employer of Defendant Officers. The City is sued pursuant to the doctrine of respondeat superior on the pendant State law claims.

Background

6. On the evening of February 27, 2009, eighteen year-old Thomas Russell III and his brother, sixteen year-old Darren Russell, were at home in their second-floor apartment with their nine-year old black lab, Lady.

7. Thomas heard a commotion coming from the first floor apartment. Shortly thereafter, Defendant Officers Katalinic, Kasper, Mohammad, and Antonsen arrived at his apartment's front door.

8. Thomas opened the door to the officers and asked if he could put away his dog, who was very friendly and who would be coming into the front room at any moment.

9. Officer Katalinic responded by putting a gun to Thomas' head, pushing Thomas to the floor, and handcuffing him.

10. The Russells' dog, Lady, came into the front room with her tail wagging. Without hesitation, Officer Antonsen shot Lady in the head.

11. Lady, who had been part of the Russell family since she was a puppy, was instantly killed.

12. When Darren—who had heard a gunshot, commotion and his brother crying—came out of his room, Defendants pointed a gun at his head and handcuffed him even though he had done nothing wrong.

13. Thomas was arrested by Defendants Kasper, Mohammed and Murphy. He was charged with obstruction of service of process even though he had done nothing to obstruct the officers. The charge was resolved in a manner indicative of his innocence.

14. The Defendant Officers entered and searched Plaintiffs' home pursuant to a search warrant obtained by Defendant Officer Kasper. Officer Kasper knowingly used false and unreliable information in order to obtain a warrant to search Plaintiffs' home.

Count I – 42 U.S.C. § 1983
Fourth Amendment – Excessive Force

15. Each of the foregoing Paragraphs is incorporated as if restated fully herein.

16. As described in the preceding paragraphs, the conduct of the Defendant Officers, acting under color of law, constituted excessive force in violation of the United States Constitution.

17. The misconduct described in this Count was objectively unreasonable and was undertaken intentionally with willful indifference to Plaintiffs' constitutional rights.

18. The misconduct described in this Count was undertaken with malice, willfulness, and reckless indifference to the rights of Plaintiffs.

19. As a result of the Defendant Officers' unjustified and excessive use of force, Plaintiff suffered injuries including emotional anguish, pain, suffering, and the loss of their beloved dog, Lady.

Count II – 42 U.S.C. § 1983
Fourth Amendment – Illegal Seizure

20. Each of the foregoing Paragraphs is incorporated as if restated fully herein.

21. The seizure of Plaintiffs' dog, Lady, as detailed above, violated Plaintiffs' Fourth Amendment right to be free of unreasonable seizures.

22. The misconduct described in this Count was objectively unreasonable and was undertaken intentionally with willful indifference to Plaintiffs' constitutional rights.

23. As a result of the Defendant Officers' illegal seizure, Plaintiffs suffered injury, including emotional anguish, pain, suffering, and the loss of their beloved dog, Lady.

Count III – 42 U.S.C. Section 1983
Fourth Amendment - Illegal Search

24. Each of the foregoing paragraphs is incorporated as if restated fully herein.

25. The search of the Plaintiffs' home was in violation of Plaintiffs' rights to be free of unreasonable searches under the Fourth Amendment to the Constitution of the United States.

26. Officer Kasper knowingly used false and unreliable information in order to obtain a warrant to search Plaintiffs' home. He did so with willful indifference to Plaintiffs' constitutional rights.

27. As a proximate result of the above-detailed actions of Defendants Officer Kasper, Plaintiffs suffered injury including, but not limited to emotional distress.

Count IV – 42 U.S.C. § 1983
Fourth Amendment – False Arrest

28. Each of the foregoing Paragraphs is incorporated as if restated fully herein.
29. As described more fully in the preceding paragraphs, Defendants—acting under color of law—arrested Plaintiff Thomas Russell III.
30. As described more fully in the preceding paragraphs, Defendants did not have probable cause to arrest Plaintiff.
31. As a result of the Defendant Officers' false arrest of Thomas Russell III, Plaintiff suffered injury, including emotional distress.

Count V – 42 U.S.C. § 1983
Fourth Amendment – Failure to Intervene

32. Each of the foregoing Paragraphs is incorporated as if restated fully herein.
33. As described more fully in the preceding paragraphs, during the constitutional violations described herein, one or more of the Defendant Officers stood by without intervening to prevent the misconduct described in this Complaint.
34. As a result of the Defendant Officers' failure to intervene, Plaintiffs suffered pain and injury, including emotional anguish, humiliation, fear, anxiety, the loss of their dog Lady, and the loss of Plaintiff Thomas Russell III's liberty, as is more fully described throughout this Complaint.

Count VI – State Law Claim
Intentional infliction of Emotional Distress

35. Each of the foregoing Paragraphs is incorporated as if restated fully herein.
36. As described in the preceding paragraphs, the misconduct of the Defendant Officers toward Plaintiffs was extreme and outrageous.
37. Given the nature of the misconduct, the Defendant Officers committed the

misconduct with knowledge that their actions were likely to cause severe emotional distress to Plaintiff.

38. As a direct and proximate cause of Defendant Ochoa's misconduct, Plaintiffs have suffered severe emotional distress, including emotional anguish, humiliation, fear, and anxiety.

**Count VII – State Law Claim
Malicious Prosecution**

39. Each of the foregoing Paragraphs is incorporated as if restated fully herein.

40. By the actions detailed above, the Defendant Officers sought to and in fact did maliciously prosecute Plaintiff Thomas Russell III on false charges for which they knew there was no probable cause.

41. As a direct and proximate result of this malicious prosecution, Plaintiff Thomas Russell III suffered injury, including the loss of liberty, emotional anguish, and humiliation.

**Count VIII – State Law Claim
Assault**

42. Each of the foregoing Paragraphs is incorporated as if restated fully herein.

43. The above-detailed conduct by the Defendant Officers, including pointing their weapons at the heads Plaintiffs Darren Thomas and Russell Thomas III, was done with the intent to cause Plaintiffs apprehension of imminent bodily harm.

44. The above-detailed conduct by the Defendant Officers did cause Plaintiffs reasonable apprehension of bodily harm.

45. As a result of the Defendant Officers' conduct, Plaintiffs suffered injury, including emotional anguish, anxiety, and fear.

**Count IX – State Law Claim
Indemnification – 745 ILCS 10/9-102**

46. Each of the foregoing Paragraphs is incorporated as if restated fully herein.

47. At the time of the events described above, the Defendant Officers were employed by the City of Chicago.

48. The Defendant Officers committed the acts alleged above under color of law and within the scope of their employment as employees of the City of Chicago.

**Count X – State Law Claim
Respondeat Superior**

49. Each of the foregoing Paragraphs is incorporated as if restated fully herein.

50. In committing the acts alleged in the preceding paragraphs, the Defendant Officers were employed by and acting as agents of the City of Chicago.

51. Defendant City of Chicago is liable as principal for all torts committed by its agents.

WHEREFORE, pursuant to 42 U.S.C. Section 1983, Plaintiffs demand judgment against Defendants for compensatory damages and, because the Defendant Officers acted maliciously, wantonly, and/or oppressively, Plaintiffs seek punitive damages against them in their individual capacities, plus the costs of this action and attorney's fees, and such other and additional relief as this court deems equitable and just.

Jury trial demanded.

RESPECTFULLY SUBMITTED,

/s/ Amanda Antholt
One of the Attorneys for Plaintiff

Amanda Antholt
Christopher Smith
Robert W. Johnson
Smith, Johnson & Antholt LLC
112 S. Sangamon Street, 3rd Floor
Chicago, IL 60607
312.432.0400

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that Plaintiffs' Amended Complaint was served on counsel for all parties by electronic means on October 1, 2010.

/s/ Amanda Antholt

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

THOMAS RUSSELL III, DARCEL RUSSELL
and THOMAS RUSSELL II, on their own behalf
and on behalf of their son, DARREN RUSSELL,
a minor,

Plaintiffs,

v.

CITY OF CHICAGO, OFFICER KATALINIC
(Star #7187), OFFICER KASPER (Star #3019)
OFFICER MOHAMMAD (Star #19999),
OFFICER ANTONSEN (Star #19692), and
SERGEANT MARTIN MURPHY,

Defendants.

No. 10 C 525

Judge George M. Marovich

Magistrate Judge Sidney I. Schenkier

**DEFENDANT HAYTHAM MOHAMMAD'S ANSWER TO PLAINTIFFS'
FIRST AMENDED COMPLAINT, AFFIRMATIVE DEFENSES, & JURY DEMAND**

Individual Defendant Officer Haytham Mohammad ("Officer Mohammad"), by and through his attorney, Gail L. Reich, Assistant Corporation Counsel for the City of Chicago, submits the forgoing Answer to Plaintiffs' Complaint, Affirmative Defenses and Jury Demand.

Introduction

1. This action is brought pursuant to 42 U.S.C. Section 1983 to redress the deprivation under color of law of Plaintiffs' Fourth Amendment rights as secured by the United States Constitution.

ANSWER: Officer Mohammad admits that this action is brought pursuant to 42 U.S.C. Section 1983 but denies that he deprived Plaintiffs of their Fourth Amendment rights as secured by the United States Constitution.

Jurisdiction and Venue

2. This Court has jurisdiction of the action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1367, and venue is proper under 28 U.S.C. § 1391(b). On information and belief, all parties reside

in this judicial district, and the events giving rise to the claims asserted herein occurred within the district.

ANSWER: Officer Mohammad admits that jurisdiction and venue are proper.

The Parties

3. Plaintiffs, Thomas and Darcel Russell, and their teenage sons Darren and Thomas Russell are residents of Chicago, Cook County, Illinois.

ANSWER: Officer Mohammad lacks knowledge and information sufficient to admit or deny the allegations set forth in this paragraph.

4. Defendant Officers Katalinic, Antonsen, Mohammad, and Kasper and Sergeant Murphy ("Defendant Officers") were at the time of this occurrence Chicago Police Officers. They engaged in the conduct complained of while in the scope of their employment and under color of law. They are sued in their individual capacities.

ANSWER: Officer Mohammad admits that he and Officers Katalinic, Antonsen, Kasper and Sergeant Murphy were at all relevant times Chicago police officers and were acting within the scope of their employment as Chicago police officers and under color of law. Officer Mohammad further admits that Plaintiffs are suing him and Officers Katalinic, Antonsen, Mohammad, Kasper and Sergeant Murphy in their individual capacities. Answering further, Officer Mohammad denies engaging in the complained of conduct and denies all remaining allegations set forth in this paragraph.

5. Defendant City of Chicago ("City") is a municipal corporation incorporated under the laws of the State of Illinois that operates the Chicago Police Department, and, at all times relevant to the events complained of herein, was the employer of Defendant Officers. The City is sued pursuant to the doctrine of respondeat superior on the pendant State law claims.

ANSWER: Officer Mohammad admits the allegations set forth in this paragraph.

Background

6. On the evening of February 27, 2009, eighteen year-old Thomas Russell III and his brother, sixteen year-old Darren Russell, were at home in their second-floor apartment with their nine-year old black lab, Lady.

ANSWER: Officer Mohammad admits that on the evening of February 27, 2009, Thomas Russell and Darren Russell were in the second-floor apartment with a dog. Officer Mohammad lacks knowledge and information sufficient to admit or deny the remaining allegations set forth in this paragraph.

7. Thomas heard a commotion coming from the first floor apartment. Shortly thereafter, Defendant Officers Katalinic, Kasper, Mohammad, and Antonsen arrived at his apartment's front door.

ANSWER: Officer Mohammad lacks sufficient knowledge or information to admit or deny the allegation "Thomas heard a commotion coming for the first floor apartment." Answering further, Officer Mohammad denies going to the second-floor apartment and denies the remaining allegations set forth in this paragraph.

8. Thomas opened the door to the officers and asked if he could put away his dog, who was very friendly and who would be coming into the front room at any moment.

ANSWER: Officer Mohammad denies the allegations set forth in this paragraph.

9. Officer Katalinic responded by putting a gun to Thomas' head, pushing Thomas to the floor, and handcuffing him.

ANSWER: Officer Mohammad denies the allegations set forth in this paragraph.

10. The Russell's dog, Lady, came into the front room with her tail wagging. Without hesitation, Officer Antonsen shot Lady in the head.

ANSWER: Officer Mohammad admits that a dog was shot, but denies the remaining allegations set forth in this paragraph.

11. Lady, who had been a part of the Russell family since she was a puppy, was instantly killed.

ANSWER: Officer Mohammad lacks sufficient knowledge or information to admit or deny the allegation “Lady, who had been part of the Russell family since she was a puppy.” Answering further, Officer Mohammad admits the remaining allegations set forth in this paragraph.

12. When Darren - who had heard a gunshot, commotion and his brother crying – came out of his room, Defendants pointed a gun at his head and handcuffed him even though he had done nothing wrong.

ANSWER: Officer Mohammad denies the allegations set forth in this paragraph.

13. Thomas was arrested by Defendants Kasper, Mohammed and Murphy. He was charged with obstruction of service of process even though he had done nothing to obstruct the officers. The charge was resolved in a manner indicative of his innocence.

ANSWER: Officer Mohammad admits that Thomas Russell was arrested and charged with obstruction of service of process. Answering further, Officer Mohammad denies the remaining allegations set forth in this paragraph.

14. The Defendant Officers entered and searched Plaintiffs’ home pursuant to a search warrant obtained by Defendant Officer Kasper. Officer Kasper knowingly used false and unreliable information in order to obtain a warrant to search Plaintiffs’ home.

ANSWER: Officer Mohammad admits that the Defendant Officers entered and searched the Plaintiffs’ home pursuant to two search warrants. Officer Mohammad denies that “Officer Kasper knowingly used false and unreliable information in order to obtain a warrant to search” the 2nd floor apartment at 9225 S. Justine. Officer Mohammad lacks sufficient knowledge or information to admit or deny the allegation that “Officer Kasper knowingly used false and unreliable information in order to obtain a warrant to search” the 1st floor apartment at 9225 S. Justine.

Count I - 42 U.S.C. § 1983
Fourth Amendment - Excessive Force

15. Each of the foregoing Paragraphs is incorporated as if restated fully herein.

ANSWER: Officer Mohammad reasserts his answers contained in the preceding paragraphs and incorporates his answers herein, as though fully stated.

16. As described in the preceding paragraphs, the conduct of the Defendant Officers, acting under color of law, constituted excessive force in violation of the United States Constitution.

ANSWER: Officer Mohammad denies the allegations set forth in this paragraph.

17. The misconduct described in this Count was objectively unreasonable and was undertaken intentionally with willful indifference to Plaintiffs' constitutional rights.

ANSWER: Officer Mohammad denies the allegations set forth in this paragraph.

18. The misconduct described in this Count was undertaken with malice, willfulness, and reckless indifference to the rights of Plaintiffs.

ANSWER: Officer Mohammad denies the allegations set forth in this paragraph.

19. As a result of the Defendant Officers' unjustified and excessive use of force, Plaintiff suffered injuries including emotional anguish, pain, suffering, and the loss of their beloved dog, Lady.

ANSWER: Officer Mohammad denies the allegations set forth in this paragraph.

WHEREFORE, Officer Mohammad requests this Court enter judgment in his favor as to Count I and against Plaintiffs and enter any other relief in favor of him and against Plaintiffs that this Court deems just and proper.

**Count II - 42 U.S.C. § 1983
Fourth Amendment - Illegal Seizure**

20. Each of the foregoing Paragraphs is incorporated as if restated fully herein.

ANSWER: Officer Mohammad reasserts his answers contained in the preceding paragraphs and incorporate his answers herein, as though fully stated.

21. The seizure of Plaintiffs' dog, Lady, as detailed above, violated Plaintiffs' Fourth Amendment right to be free of unreasonable seizures.

ANSWER: Officer Mohammad denies the allegations set forth in this paragraph.

22. The misconduct described in this Count was objectively unreasonable and was undertaken intentionally with willful indifference to Plaintiffs' constitutional rights.

ANSWER: Officer Mohammad denies the allegations set forth in this paragraph.

23. As a result of the Defendant Officers' illegal seizure, Plaintiffs suffered injury, including emotional anguish, pain, suffering, and the loss of their beloved dog, Lady.

ANSWER: Officer Mohammad denies the allegations set forth in this paragraph.

WHEREFORE, Officer Mohammad requests this Court enter judgment in his favor as to Count II and against Plaintiffs and enter any other relief in favor of him and against Plaintiffs that this Court deems just and proper.

**Count III - 42 U.S.C. §1983
Fourth Amendment – Illegal Search**

24. Each of the foregoing Paragraphs is incorporated as if restated fully herein.

ANSWER: Officer Mohammad reasserts his answers contained in the preceding paragraphs and incorporates his answers herein, as though fully stated.

25. The search of Plaintiffs' home was in violation of Plaintiffs' rights to be free of unreasonable searches under the Fourth Amendment to the Constitution of the United States.

ANSWER: Officer Mohammad denies the allegations set forth in this paragraph.

26. Officer Kasper knowingly used false and unreliable information in order to obtain a warrant to search Plaintiffs' home. He did so with willful indifference to Plaintiffs' constitutional rights.

ANSWER: Officer Mohammad denies that "Officer Kasper knowingly used false and unreliable information in order to obtain a warrant to search" the 2nd floor apartment at 9225 S. Justine and that Kasper did so with willful indifference to Plaintiffs' constitutional rights. Officer Mohammad lacks sufficient knowledge or information to admit or deny the allegation that "Officer Kasper knowingly used false and unreliable information in order to

obtain a warrant to search” the 1st floor apartment at 9225 S. Justine and that Kasper did so with willful indifference to Plaintiffs’ constitutional rights.

27. As a proximate result of the above-detailed actions of Defendants [sic] Officer Kasper, Plaintiffs suffered injury including, but not limited to emotional distress.

ANSWER: Officer Mohammad denies the allegations set forth in this paragraph.

WHEREFORE, Officer Mohammad requests this Court enter judgment in his favor as to Count III and against Plaintiffs and enter any other relief in favor of him and against Plaintiffs that this Court deems just and proper.

**Count IV - 42 U.S.C. §1983
Fourth Amendment – False Arrest**

28. Each of the foregoing Paragraphs is incorporated as if restated fully herein.

ANSWER: Officer Mohammad reasserts his answers contained in the preceding paragraphs and incorporates his answers herein, as though fully stated.

29. As described more fully in the preceding paragraphs, Defendants – acting under color of law – arrested Plaintiff Thomas Russell III.

ANSWER: Officer Mohammad admits that Thomas Russell was arrested and admits that for all relevant times the Individual Defendants were acting under color of law. Answering further, Officer Mohammad denies the remaining allegations set forth in this paragraph.

30. As described more fully in the preceding paragraphs, Defendants did not have probable cause to arrest Plaintiff.

ANSWER: Officer Mohammad denies the allegations set forth in this paragraph.

31. As a result of the Defendant Officers’ false arrest of Thomas Russell III, Plaintiff suffered injury, including emotional distress.

ANSWER: Officer Mohammad denies the allegations set forth in this paragraph.

WHEREFORE, Officer Mohammad requests this Court enter judgment in his favor as to Count IV and against Plaintiffs and enter any other relief in favor of them and against Plaintiffs that this Court deems just and proper.

**Count V – 42 U.S.C. §1983
Fourth Amendment – Failure to Intervene**

32. Each of the foregoing Paragraphs is incorporated as if restated fully herein.

ANSWER: Officer Mohammad reasserts his answers contained in the preceding paragraphs and incorporates his answers herein, as though fully stated.

33. As described more fully in the preceding paragraphs, during the constitutional violations described herein, one or more of the Defendant Officers stood by without intervening to prevent the misconduct described in this Complaint.

ANSWER: Officer Mohammad denies the allegations set forth in this paragraph.

34. As a result of the Defendant Officers' failure to intervene, Plaintiffs suffered pain and injury, including emotional anguish, humiliation, fear, anxiety, the loss of their dog Lady, and the loss of Plaintiff Thomas Russell III's liberty, as is more fully described throughout this Complaint.

ANSWER: Officer Mohammad denies the allegations set forth in this paragraph.

WHEREFORE, Officer Mohammad requests this Court enter judgment in his favor as to Count V and against Plaintiffs and enter any other relief in favor of him and against Plaintiffs that this Court deems just and proper.

**Count VI - State Law Claim
Intentional Infliction of Emotional Distress**

35. Each of the foregoing Paragraphs is incorporated as if restated fully herein.

ANSWER: Officer Mohammad reasserts his answers contained in the preceding paragraphs and incorporates his answers herein, as though fully stated.

36. As described in the preceding paragraphs, the misconduct of the Defendant Officers toward Plaintiffs was extreme and outrageous.

ANSWER: Officer Mohammad denies the allegations set forth in this paragraph.

37. Given the nature of the misconduct, the Defendant Officers committed the misconduct with knowledge that their actions were likely to cause severe emotional distress to Plaintiff.

ANSWER: Officer Mohammad denies the allegations set forth in this paragraph.

38. As a direct and proximate cause of Defendant Ochoa's misconduct, Plaintiffs have suffered severe emotional distress, including emotional anguish, humiliation, fear, and anxiety.

ANSWER: Officer Mohammad states that there is no "Defendant Ochoa" sued in this lawsuit. Answering further, Officer Mohammad denies the allegations set forth in this paragraph to the extent it is directed at him or the other Individual Defendants in this matter.

WHEREFORE, Officer Mohammad requests this Court enter judgment in his favor as to Count VI and against Plaintiffs and enter any other relief in favor of him and against Plaintiffs that this Court deems just and proper.

**Count VII – State Law Claim
Malicious Prosecution**

39. Each of the foregoing Paragraphs is incorporated as if restated fully herein.

ANSWER: Officer Mohammad reasserts his answers contained in the preceding paragraphs and incorporates his answers herein, as though fully stated.

40. By the actions detailed above, the Defendant Officers sought to and in fact did maliciously prosecute Plaintiff Thomas Russell III on false charges for which they knew there was no probable cause.

ANSWER: Officer Mohammad denies the allegations set forth in this paragraph.

41. As a direct and proximate result of this malicious prosecution, Plaintiff Thomas Russell III suffered injury, including the loss of liberty, emotional anguish, and humiliation.

ANSWER: Officer Mohammad denies the allegations set forth in this paragraph.

WHEREFORE, Officer Mohammad requests this Court enter judgment in his favor as to Count VII and against Plaintiffs and enter any other relief in favor of him and against Plaintiffs that this Court deems just and proper.

**Count VIII – State Law Claim
Assault**

42. Each of the foregoing Paragraphs is incorporated as if restated fully herein.

ANSWER: Officer Mohammad reasserts his answers contained in the preceding paragraphs and incorporates his answers herein, as though fully stated.

43. The above-detailed conduct by the Defendant Officers, including pointing their weapons at the heads [sic] Plaintiffs Darren Thomas and Russell Thomas III, was done with the intent to cause Plaintiffs apprehension of imminent bodily harm.

ANSWER: Officer Mohammad denies the allegations set forth in this paragraph.

44. The above-detailed conduct by the Defendant Officers did cause Plaintiffs apprehension of bodily harm.

ANSWER: Officer Mohammad denies the allegations set forth in this paragraph.

45. As a result of the Defendant Officers' conduct, Plaintiffs suffered injury, including emotional anguish, anxiety, and fear.

ANSWER: Officer Mohammad denies the allegations set forth in this paragraph.

WHEREFORE, Officer Mohammad requests this Court enter judgment in his favor as to Count VIII and against Plaintiffs and enter any other relief in favor of him and against Plaintiffs that this Court deems just and proper.

Count IX – State Law Claim

Indemnification – 745 ILCS 10/9-102

46. Each of the foregoing Paragraphs is incorporated as if restated fully herein.

ANSWER: Officer Mohammad reasserts his answers contained in the preceding paragraphs and incorporates his answers herein, as though fully stated.

47. At the time of the events described above, the Defendant Officers were employed by the City of Chicago.

ANSWER: Officer Mohammad admits that at all relevant times the Defendant Officers were employed by the City of Chicago. Officer Mohammad denies engaging in the wrongful conduct as set forth by Plaintiffs' allegations and denies all remaining allegations set forth in this paragraph.

48. The Defendant Officers committed the acts alleged above under color of law and within the scope of their employment as employees of the City of Chicago.

ANSWER: Officer Mohammad admits that at all relevant times the Defendant Officers were acting under color of law and within the scope of their employment as employees of the City of Chicago. Officer Mohammad denies engaging in the wrongful conduct as set forth by Plaintiffs' allegations and denies all remaining allegations set forth in this paragraph.

WHEREFORE, Officer Mohammad requests this Court enter judgment in his favor as to Count IX and against Plaintiffs and enter any other relief in favor of him and against Plaintiffs that this Court deems just and proper.

**Count X – State Law Claim
Respondeat Superior**

49. Each of the foregoing Paragraphs is incorporated as if restated fully herein.

ANSWER: Officer Mohammad reasserts his answers contained in the preceding paragraphs and incorporates his answers herein, as though fully stated.

50. In committing the acts alleged in the preceding paragraphs, the Defendant Officers were employed by and acting as agents of the City of Chicago.

ANSWER: Officer Mohammad admits that at all relevant times the Defendant Officers were employed by and acting as agents of the City of Chicago. Officer Mohammad denies engaging in the wrongful conduct as set forth by Plaintiffs' allegations and denies all remaining allegations set forth in this paragraph.

51. Defendant City of Chicago is liable as principal for all torts committed by its agents.

ANSWER: Officer Mohammad denies the allegations set forth in this paragraph.

WHEREFORE, Officer Mohammad requests this Court enter judgment in his favor as to Count X and against Plaintiffs and enter any other relief in favor of him and against Plaintiffs that this Court deems just and proper.

AFFIRMATIVE DEFENSES

1. Officer Mohammad is entitled to qualified immunity. He is a governmental official, namely a police officer, who performs discretionary functions. At all times material to the events alleged in Plaintiffs' Complaint, a reasonable police officer objectively viewing the facts and circumstances that confronted Officer Mohammad could have believed his/her actions to be lawful, in light of clearly established law and the information Officer Mohammad possessed.

2. Under Section 201 of the Illinois Tort Immunity Act ("Tort Immunity Act"), Officer Mohammad is not liable for injuries arising out of the exercise of discretionary acts. 745 ILCS 10/2-201 (2004).

3. Under Section 202 of the Tort Immunity Act, Officer Mohammad is not liable for injuries claimed in Plaintiffs' state law claim because, as a public employee, he is not liable for acts or omissions in the execution or enforcement of the law unless his conduct constitutes willful and wanton conduct. 745 ILCS 10/2-202 (2004). Officer Mohammad was engaged in the execution and enforcement of the law and his conduct was not willful and wanton.

4. Under Section 204 of the Tort Immunity Act, Officer Mohammad is not liable for the injuries claimed under Plaintiffs' state law claim because he is not liable for injuries caused by the acts or omission of other persons. 735 ILCS 10/2-204 (2004).

5. Under Section 208 of the Tort Immunity Act, Officer Mohammad is not liable for injuries allegedly caused by the instituting or prosecuting of any judicial or administrative proceeding within the scope of his employment, unless he acted maliciously and without probable cause. 745 ILCS 10/2-208 (2004).

6. Any award of damages against Officer Mohammad shall be reduced in proportion to the comparative fault of Plaintiffs' own acts or omissions, including but not limited to Plaintiffs' own negligent, intentional, or willful and wanton conduct which proximately caused the claimed injuries and damages. In addition, at the time of the actions alleged in Plaintiffs' Complaint, 735 ILCS 5/2-1116 (1992) was in effect and reduces a plaintiffs' recovery according to his/her contributory negligence and bars his/her recovery entirely when a plaintiff is more than fifty percent (50%) of the proximate cause of the injury or damage for which recovery is sought.

7. To the extent Plaintiffs failed to mitigate any of their claimed injuries or damages, any verdict or judgment obtained by Plaintiffs must be reduced by application of the principle that Plaintiffs had a duty to mitigate their claimed injuries and damages, commensurate with the degree of failure to mitigate attributed to Plaintiffs by the jury in this case.

8. Plaintiffs' state-law claims are barred by the one-year statute of limitations specified

in the Tort Immunity Act at 745 ILCS 10/8-101(a) (West 2006) to the extent applicable.

9. Plaintiffs' federal § 1983 claims are barred by the two-year statute of limitations applicable to such claims to the extent applicable.

JURY DEMAND

Officer Mohammad requests trial by jury for all issues so triable.

Respectfully submitted,

Haytham Mohammad

By: /s/ Gail L. Reich

Gail L. Reich

Assistant Corporation Counsel

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CERTIFICATE OF SERVICE

I, Gail L. Reich, hereby certify that on November 1, 2010, I caused a copy of the foregoing Mohammad Haytham's Answer to Plaintiffs' First Amended Complaint, Affirmative Defenses and Jury Demand to be served upon all counsel of record by filing the same before the Court via the Court's ECF system.

/s/ Gail L. Reich

Gail L. Reich

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

AL PHILLIPS and BARBARA	)	
PHILLIPS,	)	12 C 9895
	)	
Plaintiff(s),	)	Judge Grady
	)	
vs.	)	
	)	
CITY OF CHICAGO, OFFICER	)	
GREGORY PETTIGREW, Individually,	)	
and in official capacity as a CITY OF	)	
CHICAGO POLICE OFFICER,	)	
	)	
Defendant(s).	)	

**DEFENDANTS' REPLY IN SUPPORT OF THEIR 12(b)(6) MOTION
TO DISMISS COUNTS I AND III OF PLAINTIFFS'
AMENDED COMPLAINT**

Defendants, City of Chicago and Officer Pettigrew ("Defendants"), by one of their attorneys, Tiffany Y. Harris, Senior Corporation of the City of Chicago, submit the following reply in support of their 12(b)(6) Motion to Dismiss Counts I and III of Plaintiffs' Amended Complaint:

INTRODUCTION

Plaintiffs' claim for excessive force fails as a matter of law. As Defendants argued in their 12(b)(6) Motion to Dismiss Counts I and III of Plaintiffs' Amended Complaint ("Defendants' Motion to Dismiss"), Plaintiffs do not allege that force was used against them. See Defendants' Motion to Dismiss, pp. 2-3. Accordingly, Count I of Plaintiffs' Amended Complaint should be dismissed with prejudice pursuant to FED. R. CIV. P. 12(b)(6) for failure to state a claim upon which relief can be granted.

Additionally, in Plaintiffs' Al Phillips and Barbara Phillips Response in Opposition of

Defendants’ 12(b)(6) Motion to Dismiss Counts I and III of the Plaintiffs’ Amended Complaint (“Plaintiffs’ Response”), Plaintiffs agreed to withdraw their Count III Fourteenth Amendment due process violation claim. Accordingly, Count III of Plaintiffs’ Amended Complaint should likewise be dismissed with prejudice.

ARGUMENT

Plaintiffs fail to allege sufficient facts to present a plausible cause of action for a Fourth Amendment excessive force claim. Specifically, Plaintiffs claim that Officer Pettigrew used excessive force when he fired his weapon at Plaintiffs’ dog. *See* Amended Compl. at Count I, ¶ 30. Plaintiffs do not allege that Officer Pettigrew used force against them. *See Id.*, generally. Accordingly, Plaintiffs’ excessive force claim fails and Count I of Plaintiffs’ Amended Complaint should be dismissed with prejudice.

In Plaintiffs’ Response, they claim that Defendants’ did not submit any law or authority in support of the above notion. That is simply not true. Defendants cited to the Fourth Amendment itself, which states, in pertinent part, that the “right of *people* to be secure in their persons, houses, papers, and effects...” is protected. *See* U.S.C.A. Const. Amend. 4 (emphasis added); Defendants’ Motion to Dismiss, p. 2. Moreover, Defendants also cited to *Taylor v. City of Chicago, et al.*, 2010 WL 4877797 at *4 (N.D. Ill. Nov. 23, 2010). *See* Defendants’ Motion to Dismiss at pp. 2-3. Notably, *Taylor v. City of Chicago* was cited in support of the same argument that Defendants put forth – that an excessive force claim cannot be brought for force used on a dog.

Specifically in *Taylor v. City of Chicago*, Judge Joan Humphrey Lefkow, in ruling to dismiss an excessive force claim brought against the defendant officers for shooting a dog, held that “the court is unable to find any case allowing a person to maintain a vicarious constitutional

claim for witnessing the alleged excessive use of force on another or an owner to maintain a constitutional claim for the use of force on his or her *property*. Thus, plaintiffs' excessive force claim must be dismissed" *Taylor v. City of Chicago, et al.*, 2010 WL 4877797 at *4 (N.D. Ill. Nov. 23, 2010).

In addition, in the case of *Powell v. Johnson*, 855 F. Supp. 2d 871, 874 (D. Minnesota Jan. 17, 2012), the United States District Court for Minnesota held that "The Fourth Amendment protects *persons* from the excessive use of force by police officers." U.S. Const. amend. IV...Dogs, however are "considered *property* for Fourth Amendment purposes...rather, the so-called excessive force bears only on whether Blu(the dog) was unreasonably *seized* in violation of the Fourth Amendment, *Powell v. Johnson*, 855 F. Supp. 2d 871, 874 (D. Minnesota Jan. 17, 2012), citing *Andrews v. City of W. Branch Ia.*, 454 F.3d 914, 918 (8th Cir. 2006). Thus the law is clear that plaintiffs' cannot bring an excessive force claim pursuant to Section 1983 for the shooting of the dog in the case at bar.

Plaintiffs next engage in a lengthy discussion regarding the reasonableness standard set forth in *Graham v. Connor*, 490 U.S. 386 (1989). See Plaintiffs' Response, pp. 3-5. Plaintiffs' discussion of the reasonableness standard is not on point. It is improper for a motion to dismiss and has no bearing on whether or not the Plaintiffs claim that excessive force was used against *them*.

Plaintiff then cites several cases in support of the proposition that courts have found circumstances where force was unnecessary and therefore not permissible. See Plaintiffs' Response, pp. 5-6. Notably, not one of these cases is from the 7th Circuit, and therefore not one is controlling here. Additionally, and importantly, each of the cases cited by Plaintiffs is distinguishable to the case at hand because they involve force used upon the human Plaintiff.

Plaintiffs argue that their dog is similar to the baby in *Motley* in that it was allegedly incapable of harming Officer Pettigrew. Plaintiffs' Response, p. 6. This analogy fails. The baby in *Motley*, unlike Plaintiffs' dog, was a human citizen protected by the Constitution. Plaintiffs' submit no authority demonstrating that an excessive force claim can be brought when the force was used against an animal.

In what appears to be a desperate attempt to bolster their own arguments in support of their excessive force claim, Plaintiffs then argue that Officer Pettigrew allowed Plaintiffs' dog to "run into a neighborhood filled with children where it was a danger to the entire community." See Plaintiffs' Response, p. 7. These factual allegations are not contained in Plaintiffs' Amended Complaint. Moreover, the neighborhood children are not plaintiffs in this case, nor is the "entire community." The argument is completely irrelevant and does not support Plaintiffs claim for excessive force.

Lastly, Plaintiffs bring up *Russell*. Plaintiffs conveniently leave out allegation that gun pointed at human plaintiff during the execution of a search warrant on the plaintiffs' home. The *Russell* case involves other parties, facts, lawyers. Plaintiff's citation to *Russell* is inappropriate and provides no support for why the claim these plaintiffs bring should survive

No matter which way the Plaintiffs try to couch it, they are attempting to bring a claim which, simply, does not exist. They allege that excessive force was used against their dog, not themselves or any other human. Therefore, their Count I excessive force claim fails as a matter of law and should be dismissed with prejudice pursuant to Federal Rule of Civil Procedure 12(b)(6).

CONCLUSION

WHEREFORE, for the reasons set forth above, Defendants respectfully request this Court to enter an order dismissing with prejudice Counts I and III of Plaintiffs' Amended Complaint.

Respectfully submitted,

/s/Tiffany Y. Harris
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